SARI MARTIN and MICHAEL MARTIN, Her Husband, Plaintiffs v. JEFFREY OCHENDUSZKO and LM GENERAL INSURANCE COMPANY, Defendants	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY CIVIL ACTION – LAW NO. 17 CV 3912

MEMORANDUM AND ORDER

NEALON, J.

Plaintiffs, who were injured in an automobile accident, filed this action seeking compensatory damages from the other motorist and their own underinsured motorist ("UIM") carrier on the basis that the tortfeasor's liability insurance coverage limits are insufficient to fully compensate them for their economic and noneconomic harm. Plaintiffs have also asserted punitive damages claims against the motorist for operating a vehicle while under the influence of controlled substances. Following the tortfeasor's admission of liability for the accident and his insurer's tender of its single accident liability limits to plaintiffs in settlement of their tort claims, the UIM insurer filed a motion to sever plaintiffs' UIM claims from their tort claims against the motorist, and to stay the consideration of those UIM claims until the tort claims have been concluded.

Pa.R.C.P. 213(b) provides for the severance or bifurcation of claims or issues in order to avoid prejudice or promote convenience, and in making that determination, the

court should consider whether the separate issues to be addressed are so interwoven that evidence bearing on those questions will overlap at trial. The compensatory damages that are recoverable from the tortfeasor and the UIM insurer involve the same evidence and issues, but plaintiffs' punitive damages claims are irrelevant to the compensatory damages determinations, and proof of the motorist's illegal drug use could unfairly prejudice the UIM insurer by inflaming the jurors' passions or emotions and improperly influencing the compensatory damages awards. Although bifurcation of the compensatory damages and punitive damages claims for trial appears warranted, that decision is to be made by the assigned trial judge after discovery has been completed and this matter has been certified for trial. In the interim, no legitimate basis exists for severing the tort and UIM claims for discovery and pre-trial purposes or for staying the litigation progress of the UIM claims. Accordingly, the motion to sever and stay for discovery and pre-trial purposes will be denied, and any ruling on the motion to bifurcate the compensatory damages and punitive damages claims for trial will be deferred to the assigned trial judge.

I. FACTUAL BACKGROUND

On August 26, 2016, plaintiffs, Sari Martin and Michael Martin (the "Martins"), were involved in an automobile accident with defendant, Jeffrey Ochenduszko ("Ochenduszko"), on North Main Street in Moscow, Lackawanna County. (Docket Entry No. 9 at ¶¶ 4-5). It is alleged that while Ochenduszko was under the influence of "illicit substances" and "illegal drugs," he unlawfully "turned and collided" his vehicle with the Martins' automobile, causing Sari Martin to suffer injuries "to her neck, head and back, right-sided rib fractures, a chin laceration, fractured right thumb, chest and collarbone"

and Michael Martin to sustain injuries "to his neck, head, back, a fractured left big toe, abdominal pain, chest pain, left shoulder, right arm and right leg." (Id. at ¶¶ 6, 11, 19). The Martins aver that Ochenduszko "was charged with DUI-controlled substances, driving while privilege is suspended/revoked, and careless driving" since "he was involved in illegal drug use."[1] (Id. at ¶ 7).

The Martins assert in their amended complaint that the accident was caused by the "negligence," "recklessness," and "outrageous conduct" of Ochenduszko. (Id. at ¶ 8). They seek to recover compensatory damages from Ochenduszko for their economic and noneconomic losses, as well as punitive damages from Ochenduszko "due to [his] outrageous conduct and reckless indifference." (Id. at ¶¶ 10-16, 18-24). The Martins also claim damages for their respective losses of consortium attributable to the injuries suffered by their spouses. (Id. at ¶¶ 31-32, 34-35).

The Martins contend that the automobile insurance policy covering Ochenduszko's vehicle afforded maximum bodily injury liability coverage of $15,000.00 per person/$30,000.00 per accident, as a result of which "Ochenduszko is underinsured with respect to the claims asserted by" them. (Id. at ¶ 26, Exhibit B). At the time of the

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[1]On December 19, 2016, Ochenduszko pled guilty to driving under the influence of a drug (Oxycodone, Oxymorphone, Alprazolam, and Aminoclonazepam), 75 Pa.C.S. § 3802 (d)(2), and causing an accident resulting in injury while his operating privileges were suspended, 75 Pa.C.S. § 3742.1(a). (Com. v. Ochenduszko, No. 16 CR 2433 at Docket Entry No. 9). On April 11, 2017, Ochenduszko was sentenced to 5 months to 12 months of house arrest followed by one year of probation, and was later granted release on parole on May 9, 2017. (Id. at Docket Entry Nos. 13, 22). On March 1, 2018, Ochenduszko "was caught [f]urnishing a fake urine while being drug-tested" and "admitted to smoking pot" while on parole, and on April 5, 2018, his parole and probation were revoked and he was resentenced to an aggregate period of incarceration of 9 months to 18 months at the Lackawanna County prison. (Id. at Docket Entry Nos. 28, 31). On April 11, 2018, he was allowed to participate in the Community Service Program with the understanding that he would be granted work release status on July 25, 2018, "contingent upon his successful completion of the Community Service Program." (Id. at Docket Entry No. 32). On October 15, 2018, Ochenduszko was removed from the work release program and recommitted to the Lackawanna County prison for violating "the rules and regulations of the Lackawanna County Work Release Program." (Id. at Docket Entry No. 35).

accident, the Martins were insureds under an "auto insurance coverage" policy with defendant, LM General Insurance Company ("LM General"), that provided underinsured motorist ("UIM") coverage of $50,000.00 per person/$100,000.00 per accident. (Id. at ¶ 27, Exhibit C). Based upon the allegation that their accident-related compensatory damages exceed Ochenduszko's liability insurance coverage limits, the Martins have advanced claims for UIM benefits against LM General in Count III of the amended complaint. (Id. at ¶¶ 26-29). In their prayer for relief against LM General, the Martins seek to recover compensatory damages, but not punitive damages as they have demanded from Ochenduszko. (Id. at p. 7).

LM General has filed a motion pursuant to Pa.R.C.P. 213(b) requesting the severance of the Martins' UIM claims from their tort claims against Ochenduszko, and further seeking to "stay [the Martins'] UIM claims until the underlying third party negligence claims have resolved." (Docket Entry No. 27 at p. 4). It notes that the Martins' UIM coverage obligates LM General to "pay compensatory damages which an 'insured' is legally entitled to recover from the owner or operator of an 'underinsured motor vehicle' because of 'bodily injury.'" (Docket Entry No. 37, Exhibit A). Since the Martins have only asserted compensatory damages claims against LM General, it argues that it "would be unfairly prejudiced" by the continued consolidation of the Martins' tort and UIM claims "because of the danger of having the insurance company as a named defendant when the jury is considering negligence and punitive damages claims against co-defendant, Jeffrey Ochenduszko, based upon Mr. Ochenduszko's alleged intoxicated status at the time of the accident." (Docket Entry No. 26 at p. 4). In support of its claim of unfair prejudice, LM General references a letter that its counsel received from the

Martins' counsel on May 31, 2018, in which the Martins' counsel emphasized that Ochenduszko "was under the influence of illicit drugs and/or alcohol at the time of the accident" and stated "that [Ochenduszko's] actions will enrage the jury and result in a verdict in excess of the UIM limits." (Docket Entry No. 27, Exhibit A). LM General submits that the Martins' tort and UIM claims should be severed, with the UIM claims being stayed pending the resolution of the tort claims since "Pennsylvania law does not allow the tortfeasor's intoxicated status to factor into UIM claims" and the Martins "are signaling their intent to use the tortfeasor's status of being under the influence in order to drum up a verdict against both defendants." (Docket Entry No. 26 at p. 5).

Citing Bingham v. Poswistilo, 24 Pa. D. & C. 5th 17 (Lacka. Co. 2011), the Martins assert that Lackawanna County has approved the consolidation of tort and UIM claims because they "arise from the same occurrence and involve common questions of fact or law affecting the respective liabilities of the tortfeasor and the UIM carrier." (Docket Entry No. 34 at pp. 3-4). They contend that LM General cannot cite any legal authority for the proposition "that Pennsylvania law does not allow the tortfeasor's intoxicated status to factor into UIM claims." (Id. at p. 6). The Martins urge the adoption of the reasoning set forth in Cahill v. Fritz, 45 Pa. D. & C. 5th 25 (Monroe Co. 2015), and assert that Cahill allowed the plaintiff to consolidate compensatory and punitive damages claims with a UIM claim for trial on the grounds that "the claims against the driver for negligence and punitive damages and the claim against the insurer for UIM coverage arose out of the same vehicular collision" and "sought damages for the same underlying accident and injuries." (Id. at pp. 4-5).

On November 27, 2018, Ochenduszko filed a "Joinder in [LM General's] Motion to Sever" and supporting brief and attested that he concurs with its severance request. (Docket Entry No. 38). At the time of oral argument on December 28, 2018, Ochenduszko's counsel confirmed that Ochenduszko has admitted liability for the accident and that his insurer has tendered its single accident liability limits of $30,000.00 to the Martins in settlement of their tort claims. (Docket Entry No. 20). Following the completion of oral argument, LM General's motion to sever and stay was submitted for a decision.

II. DISCUSSION

(A) STANDARD OF REVIEW

Pennsylvania Rule of Civil Procedure 213(b) authorizes the court, "in furtherance of convenience or to avoid prejudice," to sever claims or issues and "order a separate trial" of those matters. Pa.R.C.P. 213(b). "The decision whether to sever or bifurcate under Rule 213(b) is entrusted to the discretion of the trial court, which is in the best position to evaluate the necessity for taking measures the rule permits." Ball v. Bayard Pump & Tank Co., Inc., 620 Pa. 289, 304, 67 A.3d 759, 767 (2013). Bifurcation or severance under Rule 213(b) "should be carefully and cautiously applied and be utilized only in a case and at a juncture where informed judgment impels the court to conclude that application of the rule will manifestly promote convenience and/or actually avoid prejudice." Castellani v. Scranton Times, L.P., 161 A.3d 285, 297 (Pa. Super. 2017) (quoting Stevenson v. General Motors Corp., 513 Pa. 411, 521 A.2d 413, 419 (1987)), *app. denied*, 174 A.3d 553 (Pa. 2017). When deciding whether to sever or bifurcate claims, the court should consider whether the separate issues to be addressed in

connection with those claims are so interwoven that evidence bearing on those questions will overlap during the segregated phases of the trial. Ptak v. Masontown Men's Softball League, 414 Pa. Super. 425, 429, 607 A.2d 297, 300 (1992), *app. denied*, 533 Pa. 661, 625 A.2d 1194 (1994).

(B) JOINDER OF TORT AND UIM CLAIMS

Prior to 2005, jury trials were not conducted in claims for uninsured motorist (UM) or UIM benefits since those disputes were subject to binding arbitration due to Pennsylvania Insurance Department regulations mandating insurance policy language requiring arbitration of UM/UIM claims. Moritz v. Horace Mann Property & Cas. Ins. Co., 42 Pa. D. & C. 5th 72, 75-76 (Lacka. Co. 2014) (citing Ronca & Sloane, *Pennsylvania Motor Vehicle Insurance: An Analysis of the Financial Responsibility Law* at pp. 6-14 to 6-20 (3d ed. 2013)). Under that framework, UM/UIM claims were decided by a panel of arbitrators. *See, e.g.*, Hartford Ins. Co. v. O'Mara, 907 A.2d 589, 591 (Pa. Super. 2006) (arbitration panel found that insured's signature on coverage option forms did not constitute proper written request for reduction of UM/UIM coverage under 75 Pa.C.S.A. § 1734, reformed the UM/UIM policy to afford higher stacked coverage limits, and awarded damages to claimant), *app. denied*, 591 Pa. 727, 920 A.2d 833 (2007); Overfield v. Ohio Cas. Ins. Co., 39 Pa. D. & C. 4th 548, 555-556 (Lacka. Co. 1998) (arbitrators determined the claimant's total damages, the appropriate offset for the tortfeasor's liability coverage limits, and the net award to the claimant). However, in Insurance Federation of Pennsylvania, Inc. v. Koken, 585 Pa. 630, 889 A.2d 550 (2005), the Supreme Court of Pennsylvania overruled Prudential Property and Casualty Insurance Company v. Muir, 99 Pa. Cmwlth. 620, 513 A.2d 1129 (1986), and held that the Insurance

Department does not have the express or implied authority to require binding arbitration of UM/UIM claims. Koken, 585 Pa. at 637-638, 889 A.2d at 555. "In the wake of Koken, insurance policies now make arbitration of UM/UIM disputes optional or conditioned upon the insurer's consent, as a result of which UM/UIM claims are being litigated in court proceedings." Bingham, 24 Pa. D. & C. 5th at 24.

Once UM/UIM claims became subject to court proceedings rather than arbitration, plaintiffs largely adopted a practice of consolidating third party liability claims and UIM claims in a single proceeding pursuant to Pa.R.C.P. 2229(b) on the grounds that both claims arise out of the same occurrence and present common questions of fact or law affecting the named defendants' liabilities.[2] *See* Kujawski v. Fogmeg, 46 Pa. D. & C. 5th 327, 334-335 (Lacka. Co. 2015); Bingham, 24 Pa. D. & C. 5th at 29-31 (collecting cases). As a result, tortfeasors and insurers have been named as defendants in the same actions seeking accident-related damages. *See, e.g.*, Foster v. Naresh, 2013 WL 9904109, at *4 (Schuylkill Co. 2013) ("This Court sees no reason why, in this case, the rationale of Bingham should not be followed" and tort and UIM claims joined in a single proceeding); Bradish-Klein v. Kennedy, 13 Pa. D. & C. 5th 445, 447 (Beaver Co. 2009) (allowing consolidation of tort and UIM claims since "the third party and underinsured motorist claims arose out of the same occurrence which was the motor vehicle accident, and

[2] Rule 2229(b) governs the permissive joinder of defendants, and provides that "[a] plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief, jointly, severally, separately or in the alternative...arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action." Pa.R.C.P. 2229(b). Since Rule 2229(b) uses the disjunctive word "or" in the phrase "right to relief jointly, severally, separately or in the alternative," and UIM coverage is triggered once the plaintiff's damages exceed the coverage limits of the tortfeasor's liability insurance protection, a UIM carrier may be "separately" liable for the plaintiff's damages that are in excess of the applicable liability insurance coverage. Bingham, 24 Pa. D. & C. 5th at 36.

involved the same factual questions of liability and damages."). In Stepanovich v. McGraw, 78 A.3d 1147 (Pa. Super. 2013), *app. denied*, 625 Pa. 645, 89 A.3d 1286 (2014), the Superior Court of Pennsylvania considered the propriety of such a joinder for trial in light of Pa.R.E. 411 which provides that "[e]vidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully." Noting that "Pa.R.E. 411 prohibits the introduction of liability insurance into evidence," whereas UIM coverage does "not provide indemnity to the tortfeasor," Stepanovich concluded that "a course of action identifying [the UIM insurer] as a party would not necessarily run afoul of...Rule 411" in such a consolidated trial. Id. at 1150.

More than two years prior to Stepanovich, we considered the propriety of joining tort and UIM claims in a single proceeding in Bingham, supra. We indicated that joinder appeared appropriate in that case since the tort and UIM claims were "based upon the same automobile accident and the injuries allegedly suffered by Bingham in that accident," the "issues to be decided in both actions [we]re the negligence of the tortfeasors, the cause(s) of the accident and resulting harm, and the damages recoverable by Bingham for those injuries," and "the proof offered in the tort and UIM actions w[ould] be identical." Bingham, 24 Pa. D. & C. 5th at 37-38. However, Bingham cautioned that "[w]hat distinguishes the tort/UIM analysis from the customary joinder inquiry under Rule 2229(b) is the concern regarding the admission of evidence relating to insurance and any prejudice that it may present for the defendants," as a result of which the recognized interests favoring joinder "must be balanced against the policies which Pa.R.E. 411 serves to promote." Id. at 38. Guided by Pennsylvania appellate precedent

analyzing Rule 411, and rulings from other jurisdictions addressing references to insurance in consolidated tort and UIM actions, we concluded:

> Based upon the foregoing, Pennsylvania trial courts may join and try tort and UIM claims in a single action without running afoul of Pa.R.E. 411. Assuming *arguendo* that the UIM insurer agrees to be bound by the jury's verdict, the trial judge may opt to try the consolidated case as a tort action without disclosing the identity or involvement of the UIM insurer and thereafter mold the verdict as necessary. Alternatively, the trial court may consider evidence of insurance as being "offered for another purpose" under Rule 411 and allow the UIM insurer to be identified and the tort and UIM issues to be decided jointly based upon carefully crafted instructions to the jury.

Id. at 44.

Consequently, "after weighing the pertinent policies and goals sought to be fostered by Pa.R.C.P. 2229(b) and Pa.R.E. 411, we conclude[d] that tort actions and UIM claims may be joined in a single proceeding, at least for pre-trial purposes," but stated that "the judge to whom the consolidated matter is assigned for trial will ultimately determine whether to sever the tort and UIM claims for separate jury trials or try them as consolidated claims via one of the options identified above." Id. at 44-45. In Kujawski, we had occasion to decide, as the assigned trial judge, whether to join tort and UIM claims for a single trial, and if so, what instructions to furnish to the jury regarding the named parties and the questions to be decided. In light of the finding in Stepanovich that the inclusion and identification of the UIM insurer as a named party in a consolidated tort and UIM benefits trial "would not necessarily run afoul of Pa.R.E. 411", and based upon persuasive authority from other jurisdictions, Kujawski held that "the questions of Fogmeg's causal negligence, Kujawski's accident-related injuries and the compensatory damages recoverable under Pennsylvania law will be tried in a single proceeding," and that "Fogmeg's request to remove Allstate [Insurance Company] 'from the case caption'

and to bar Kujawski from referring to Allstate as a party will be denied."[3] Kujawski, 46 Pa. D. & C. 5th at 341. Additionally, with the benefit of model jury instructions drafted in other states, Kujawski also formulated jury instructions to be provided to the jury during the consolidated trial. Id. at 350-351. *See also*, Pa. SSJI (Civ.) §13.72, Subcommittee Note (Rev. March 2016).

More recently, we were confronted with the issue of whether tort and UIM claims could be consolidated with the plaintiff's first party bad faith claim against her UIM insurer pursuant to 42 Pa.C.S. § 8371. In Fertig v. Kelley, 2017 WL 6762205 (Lacka. Co. 2017), the UIM insurer "filed a motion seeking to sever plaintiff's UIM claim and bad faith claim..., and to stay all bad faith discovery and proceedings until the UIM claim [wa]s litigated to a conclusion." Id. at *1. Unlike the plaintiff's tort and UIM claims which involved the "same negligence, causation and damages issues" that were "so intertwined that the evidence relating to those questions w[ould] significantly overlap during any joint trial," the plaintiff's bad faith claim was "based upon Section 8371 of the Judicial Code that 'authorizes courts, which find that an insurer has acted in bad faith towards its insured, to award punitive damages, attorneys' fees, interest and costs.'" Id. at *4-5 (quoting Birth Center v. St. Paul Companies, Inc., 567 Pa. 386, 402-403, 787 A.2d

[3] The UIM carrier in Kujawski contended that the claimant was not entitled to UIM coverage under its policy with her grandparents since she was not a resident of her grandparents' home at the time of the accident. Kujawski, 46 Pa. D. & C. 5th at 330-331. Finding that "the issue of Kujawski's residency at the time of the accident, and the concomitant availability of UIM coverage under her grandparents' policy with Allstate, do not share a common factual background with the negligence, causation and damages issues, nor do those coverage matters implicate common questions of law or fact," we granted "Fogmeg's request to bifurcate the liability and damages issues from the question of Kujawski's residency." Id. at 342-343. Under the bifurcated trial procedure, the jury would "first address the merits of Kujawski's liability and UIM claims and fashion an appropriate verdict, and in the event that the damages awarded exceed[ed] Fogmeg's liability insurance policy limits of $100,000.00, a second phase of the trial w[ould] be conducted before the same jury to determine whether Kujawski was a resident of the [grandparents'] home on" the date of the accident. Id. at 343.

376, 386 (2001)). Additionally, while the tort and UIM claims in Fertig would be decided by a jury, the statutory bad faith claim under 42 Pa.C.S. § 8371 had to "be decided by a trial judge rather than a jury." Id. at *4 (citing Mishoe v. Erie Insurance Company, 573 Pa. 267, 282, 824 A.2d 1153, 1161 (2003)).

With respect to the UIM insurer's request to sever the bad faith claim for pre-trial purposes and to stay any bad faith discovery pending completion of the tort and UIM claims litigation, we reasoned that "[a] complete bifurcation of Fertig's UIM and bad faith claims at this juncture of the litigation would not foster the expeditious resolution of this matter, and instead would cause delay and additional expense and inconvenience to the parties and witnesses." Id. at *8. However, as for the trial of those same claims, we concluded:

> The introduction of evidence of any bad faith conduct by [the UIM insurer] Horace Mann during the jury trial of Fertig's third party liability and UIM claims could unduly prejudice [the tortfeasors] by inflaming the passions or emotions of the jurors to such a degree as to enhance the jury's award of compensatory damages against [the tortfeasors]. In that event, [the tortfeasors] would be punished or adversely affected by the malfeasance of a co-defendant over whom they had no control or influence. Thus, pursuant to Pa.R.E. 403, any evidence of Horace Mann's bad faith conduct should not be admissible during the jury's consideration of the negligence, causation, and damages issues since the probative value of any such evidence would be outweighed by the danger of unfair prejudice to [the tortfeasors].

Id. at *9. Following the approach that had been adopted in Gunn v. The Automobile Ins. Co. of Hartford, 2008 WL 6653070 (Alleg. Co. 2008), *app. quashed*, 971 A.2d 505 (Pa. Super. 2009) and Wutz v. Smith, 2009 WL 2920956 (Alleg. Co. 2009), we held that: (1) the tort and UIM claims would remain consolidated for pre-trial and trial purposes; (2) in the event that any bad faith discovery was withheld or redacted by the UIM insurer during the discovery phase, the UIM insurer would be required to deliver unredacted copies of

that bad faith discovery to the plaintiff once the jury had commenced its tort and UIM claims deliberations; and (3) following the plaintiff's receipt and review of that bad faith discovery, the plaintiff could opt either to proceed immediately with the non-jury trial of her bad faith claim or to request a continuance for a reasonable period of time in order to complete further pre-trial preparations to litigate her bad faith claim. Id. at *9-10.

In the case at bar, the Martins seek to recover compensatory damages from Ochenduszko and LM General, and to that extent, the negligence, causation, and damages issues relative to the Martins' tort and UIM claims arise out of the same accident and involve common questions of law or fact. However, the Martins also assert a punitive damages claim against Ochenduszko only for operating a motor vehicle while under the influence of illicit drugs. *See* Focht v. Rabada, 217 Pa. Super. 35, 40, 268 A.2d 157, 160 (1970) ("[W]e believe that driving under the influence of intoxicating liquor with its very great potential for harm and serious injury may under certain circumstances be deemed 'outrageous conduct' and 'a reckless indifference to the interests of others' sufficient to allow the imposition of punitive damages."); Schwab v. Bates, 12 Pa. D. & C. 4th 162, 167-168 (Westmoreland Co. 1991) (plaintiff may recover punitive damages from the estate of a deceased tortfeasor who was driving while intoxicated at the time of the fatal accident). In light of Ochenduszko's admission of liability, coupled with the fact that the Martins' UIM coverage with LM General extends only to "compensatory damages," the introduction of Ochenduszko's operation of a vehicle while under the influence of Oxycodone, Oxymorphone, Alprazolam, and Aminoclonazepam "could unduly prejudice [LM General] by inflaming the passions or emotions of the jurors to such a degree as to enhance the jury's award of compensatory damages against [LM General]." Fertig, supra,

at *9. Indeed, LM General has produced correspondence from the Martins' counsel stating the intention to present evidence of Ochenduszko's drug-induced state in an effort to "enrage the jury and result in a verdict in excess of the UIM limits." (Docket Entry No. 27, Exhibit A).

LM General's motion requests two forms of relief. First, it seeks to bifurcate the Martins' UIM claims from their tort claims both for pre-trial (i.e., discovery) and trial purposes. LM General has not articulated any "convenience" or "prejudice" rationale under Pa.R.C.P. 213(b) justifying severance of the tort and UIM claims for all pre-trial purposes, and it would promote judicial economy, avoid duplication of effort and expense, and facilitate the progress and disposition of this litigation if those claims remain joined for discovery and pre-trial proceedings. Hence, the request to immediately sever the Martins' tort and UIM claims for all pre-trial purposes will be denied. Furthermore, although every trial court possesses the inherent "power to stay proceedings, including discovery," Luckett v. Blaine, 850 A.2d 811, 819 (Pa. Cmwlth. 2014), the requisite "good cause" does not exist for staying discovery and other pre-trial proceedings under Pa.R.C.P. 4013.

Second, LM General seeks to sever the Martins' tort and UIM claims for trial, and identifies compelling reasons why it could be unfairly prejudiced by evidence of Ochenduszko's reckless actions in operating a vehicle while under the influence of several drugs, particularly since such evidence is irrelevant to the jury's determination of compensatory damages. It is quite common for trial courts to bifurcate trials into separate compensatory and punitive damages phases due to concerns that evidence which is relevant only to the question of punitive damages could unfairly influence the jury's

consideration of compensatory damages. *See* Straw v. Fair, 187 A.3d 966, 980 (Pa. Super. 2018); Dubose v. Quinlan, 125 A.3d 1231, 1245 (Pa. Super. 2015), *aff'd*, 173 A.3d 634 (Pa. 2017). Such bifurcation can serve as a means of preventing unfair prejudice to another party caused by a jury award that is premised upon an improper evidentiary basis. *See* Parr v. Ford Motor Company, 109 A.3d 682, 696 (Pa. Super. 2014) ("unfair prejudice" supporting the exclusion of relevant evidence "means a tendency to suggest decision on an improper basis or divert the jury's attention away from its duty of weighing the evidence impartially."), *app. denied*, 633 Pa. 745, 123 A.3d 331 (2015), *cert. denied*, 136 S. Ct. 557 (U.S. 2015); Detrick v. Burrus, 45 Pa. D. & C. 5th 66, 70 (Lacka. Co. 2015) ("Evidence of Detrick's [post-accident] marijuana use or positive drug screen could arguably divert the jury's focus from its sole task of deciding the disputed issue of damages in this case, or could otherwise produce a damages award on an improper basis.").

But, as we noted in Bingham, "the judge to whom the consolidated matter is assigned for trial will ultimately determine whether to sever the tort and UIM claims for separate jury trials or to try them as consolidated claims," and "[i]t would be inappropriate for the judge who decides the joinder issue to make that determination preemptively for the judge who will preside over the trial of the tort/UIM case." Bingham, 24 Pa. D. & C. 5th at 45. A certificate of readiness has not yet been filed in this matter under Lacka Co. R.C.P. 214(a), and as a consequence, this case has not been assigned to a specific judge for trial. Therefore, although LM General has articulated legitimate reasons for bifurcating the trial into a first phase during which Ochenduszko has admitted liability and the jury will determine the amount of compensatory damages, followed by a second phase

in which the Martins' punitive damages claim against Ochenduszko will be litigated, that determination should be made by the presiding trial judge. Accordingly, any ruling on LM General's motion to sever for purposes of trial will be deferred to the assigned trial judge.[4] An appropriate Order follows.

[4] The Martins' citation to the Monroe County ruling in Cahill, for the proposition that negligence and punitive damages claims against a motorist may be consolidated for trial with the plaintiff's UIM claim, is misplaced. In Cahill, the court merely denied the defendant's preliminary objections asserting misjoinder of claims at the pleadings stage, and found that "allowing the case to proceed through discovery will save judicial resources and avoid unnecessary delay and expense to the parties." Cahill, 45 Pa. D. & C. 5th at 29-30. However, Cahill further concluded that, "[a]fter discovery, if it is apparent that keeping the claims joined together would cause undue prejudice to defendant, then the claims can be severed at the time of trial if necessary." Id. at 30.

SARI MARTIN and MICHAEL MARTIN, Her Husband,	:	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY
Plaintiffs	:	CIVIL ACTION – LAW
	:	NO. 17 CV 3912
v.	:	
JEFFREY OCHENDUSZKO and LM GENERAL INSURANCE COMPANY,	:	
Defendants	:	

ORDER

AND NOW, this 16th day of January, 2019, upon consideration of "Defendant LM General Insurance Company's Motion to Sever," the exhibits and memoranda of law submitted by the parties, and the oral argument of counsel, and based upon the reasoning set forth in the foregoing Memorandum, it hereby ORDERED and DECREED that:

1. The motion of defendant, LM General Insurance Company, to sever plaintiffs' tort claims and underinsured motorist benefits claims and to stay those underinsured motorist benefits claims pending the resolution of their tort claims is DENIED in part and DEFERRED in part;

2. The motion to sever the tort claims and underinsured motorist benefits claims pursuant Pa.R.C.P. 213(b) and to stay the underinsured motorist benefits claims under Pa.R.C.P. 4013 for purposes of discovery and pre-trial proceedings is DENIED; and

3. Any ruling on the motion to bifurcate the trial of the compensatory damages claims against defendants, Jeffrey Ochenduszko and LM General Insurance Company,

and the punitive damages claims against defendant, Jeffrey Ochenduszko, is DEFERRED to the judge who is assigned this case for trial pursuant Lacka. Co. R.C.P. 214(a).

BY THE COURT:

J.
Terrence R. Nealon

cc: *Written notice of the entry of the foregoing Memorandum and Order has been provided to each party pursuant to Pa. R. C. P. 236 (a)(2) and (d) by transmitting time-stamped copies via electronic mail to:*

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